

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4167 of 1982

with

SPECIAL CIVIL APPLICATION No 2105 of 1983

and

SPECIAL CIVIL APPLICATION No 3244 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANKERBHAI H PATEL & OTHERS

Versus

STATE OF GUJARAT & OTHERS

Appearance: In all the Special Civil Applications:

MR GIRISH PATEL for the Petitioners

MR SAMIR DAVE for the Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/11/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. All these Special Civil Applications are based on same facts and

grounds, and as such, they are being disposed of by this common order.

2. Challenge has been made by the petitioners in these petitions to the order of the respondent under which their services were terminated. It is not in dispute that the petitioners were appointed on the post of Stenographer Gr.II after there was an open market advertisement and they have been selected. The case of the respondent was that their appointment was not regular and as such, their services were terminated under the impugned orders.

3. The counsel for the petitioners though raised several contentions to challenge the orders of the termination of services of the petitioners, but I do not consider it necessary to advert to all those contentions except the one which according to me is sufficient to allow all these Special Civil Applications.

4. Before considering the contentions, I think it proper to refer to the fact that these Special Civil Applications have been admitted and the petitioners were protected by grant of the interim relief, and as such, they are continuing in the service.

5. The petitioners were appointed as Stenographers Gr.II under the office order dated 14th August, 1978. These appointments have been made by the Superintending Engineer, Kadana Project Circle, Diwada Colony. The illegality in this order is said to be that the Collector was the competent person to make the appointments and not the Superintending Engineer. The petitioners are working for all these years under the interim order and now they are in service for last 16 years. It is not the case of any back door entry and only illegality is that the competent authority has not made the appointment. Be that as it may.

6. One of the contentions raised by the learned counsel for the petitioners is that the termination of the services of the petitioners has been made without giving notice or opportunity of hearing to them otherwise they would have satisfied the respondents that even if it is taken to be a case of irregular appointments then their services are likely to be regularised by giving them a chance to appear in the special examination as it has been done in the case of irregular appointments made of other persons.

7. The respondents have not filed any reply to the

writ petitions, and as such, the facts stated therein stands uncontroverted. The fact that the orders impugned in these Special Civil Applications have been made in violation of principles of natural justice stands uncontroverted. The petitioners were appointed after selection and as such, it cannot be said to be a back door entry and in case for any reason the respondent decides to terminate their services it was obligatory on its part to given them an opportunity of hearing which admittedly has not been done in the present case.

8. On this short ground, these Special Civil Applications are allowed. The orders dated 10th September, 1982 annexure 'J' in Special Civil Application No.4167 of 1982, dated 14th April, 1983 annexure 'L' terminating the services of the petitioners in Special Civil Application No.2105 of 1983 are quashed and set aside. However, it shall be open to the respondent to pass appropriate order after giving notice and opportunity of hearing to the petitioners. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-